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IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

No. C. R. A. 1988.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

ABRAHAM S. RATNER,
Defendant and Appellant.

STATEMENT OF JURISDICTION ON APPEAL.

In compliance with Rule 12 of the Supreme Court of the United States the Appellant herewith presents his statement of jurisdiction on Appeal.

A.

The statutory provisions which sustain jurisdiction are Section 237 of the Judicial Code (28 U. S. C. A. 344 as amended by Act of January 31, 1928, Chap. 14, 45 Stat. 54, and Act of April 26, 1928, Chap. 440, 45 Stat. 466).

B.

The Fourteenth Amendment to the Constitution of the United States is involved in said decision, the pertinent portions of which are here involved are:

"• • • nor shall any state deprive any person of life, liberty or property without due process of law, nor

deny to any person within its jurisdiction the equal protection of the laws".

C.

The Judgment and Orders in this case were rendered by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, on December 9th, 1943, and the Order denying Appellant's petition for rehearing, made on December 30th, 1943; and by said Orders the said Appellate Department of the Superior Court specifically commented on the United States Constitutional question herein involved and presented and specifically held that said sections 510 and 511 of the Vehicle Code of California did not violate the provisions of the Fourteenth Amendment, or any part of the United States Constitution.

That the said Appellate Department of the Superior Court is the Highest Court in the State of California to which an appeal could be taken from a judgment or order of the said Municipal Court of the City of Los Angeles.

D.

Nature of Case and Ruling Below.

On the 12th day of August, 1943, the City Attorney of the City of Los Angeles filed in the Municipal Court of said city a complaint charging this appellant with a violation of Sections 510 and 511 of the Vehicle Code of California, a misdemeanor, the pertinent portion of which is as follows, to wit:

"• • • on or about the 3rd day of August 1943, at and in the City of Los Angeles, County of Los Angeles, State of California, a misdemeanor, to wit: a violation of Section 510 of the Vehicle Code of the State of California (Speeding) was committed by Abraham S. Ratner • • • who at the time and place last aforesaid

did willfully and unlawfully drive a vehicle, to wit: an automobile upon Sunset Boulevard between Sanborn Ave., and Hillhurst Ave., a highway in said City of Los Angeles, at a faster rate of speed than was then and there reasonable and prudent, having due regard for the traffic on, the surface and width of said highway, and at a speed which then and there endanged the safety of persons and property and at the approximate speed of 40 miles per hour in a zone, district and place where the *prima facie* lawful rate of speed named in Section 511 of the Vehicle Code was 25 miles per hour". * * *

That the said defendant-appellant was duly arraigned on said complaint in said Court and entered a plea of Not Guilty; That thereafter said defendant-appellant moved said Court to strike all or part of said complaint and also to dismiss said complaint on the ground that the said sections 510 and 511 of the Vehicle Code of California are void under the provisions of the State and Federal Constitutions for the reason that said section 510 V. C. is too vague, indefinite and uncertain to properly charge any criminal offense, and said section 511 V. C. attempts to create a crime by presumption of law and require a defendant to prove himself innocent.

That said motions were denied by the Court and the case set for trial. That at the trial of said action the case for the people was stipulated to as follows, by counsel for the people and for the defendant, to wit:

"People's Case: That on or about the 3rd day of August 1943, the defendant Abraham S. Ratner, was the driver of an automobile and did drive said automobile on Sunset Boulevard between Sanborn Avenue and Hillhurst Avenue; Sunset boulevard between said points being a highway in the State of California, City of Los Angeles; that between said streets on Sunset Boulevard Defendant drove his car in excess of 25 miles per hour, to wit:, 40 miles an hour; that said highway

between said points is within the 25 mile zone as designated by correctly and legally erected signs and was within a residential district as defined by the Vehicle Code * * *"

That upon these stipulated facts the People rested and the defendant rested.

That thereupon the Court found the defendant Guilty and sentenced him to pay a fine of $20.00 or serve 5 days in the City Jail.

That within the time allowed by law, an Appeal was taken and effected, to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles. In this latter Court Defendant-appellant again raised the question of the unconstitutionality of said Code sections 510 and 511 V. C. of California, under the Fourteenth Amendment to the U. S. Constitution.

Said Appellate Department of the Superior Court upheld the constitutionality of both of said Code sections in its original opinion and Order and in Denying a petition for rehearing.

The particular points raised under the Fourteenth Amendment to the Constitution of the United States and denied by said Appellate Department of the Superior Court of the State of California, County of Los Angeles, are these:

I.

Is Section 510 of the Vehicle Code of California in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and particularly the Due Process clause thereof, for the reasons that the provisions of said code section are too vague, indefinite and uncertain to properly charge a criminal offense?

II.

Are the provisions of Section 511 of the Vehicle Code of California violative of the Fourteenth Amendment to the Constitution of the United States, and in particular, the Due Process clause thereof, for the reasons that the provisions of said code section attempt to create a crime by presumption of law, which presumption is not related to the provisions of section 510 of the Vehicle Code of California, which contains the basic speed law of California, and which presumption is illogical, unreasonable and oppressive?

I.

Is Section 510 of the Vehicle Code of California in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and particularly the due process clause thereof, for the reason that the provisions of said code section are too vague, indefinite and uncertain to properly charge a criminal offense?

Section 510 of the Vehicle Code reads as follows:

> "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent, having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property".

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which is the Court of last resort in California for cases of this kind, arising in the Municipal Court of the City of Los Angeles, having affirmed the conviction and sentence of this appellant by said Municipal Court, held, in effect, that the foregoing section was sufficiently definite and certain to be a valid penal statute under the

Fourteenth Amendment to the Constitution of the United States.

No written opinion was rendered by said Court, giving its reasoning in the premises, the Court contenting itself with filing the following memo, to wit: "MEMO. We find no basis for holding that either sec. 510 or sec. 511 of the Vehicle Code of California violates either the Constitution of the State of California or the Constitution of the United States (see: *People* v. *Banat* (1940), 39 Cal. App. (2) 765; *In re Johnson* (1935), 6 Cal. App. (2) 654; *People* v. *Smith* (1939), 36 Cal. App. (2) 748; *People* v. *Bigman* (1940), 38 Cal. App. (2) 773."

The Challenge to the Statute is that it is too vague, indefinite and uncertain to properly charge a crime, since the statute itself fails to define what rate of speed is proper, reasonable or prudent under the varying circumstances on a public highway. Reasonable men would differ as to what constituted proper speed under given circumstances. How can the driver arrive at a correct conclusion, under such vague, indefinite provisions, when he is moving along the highway under constantly changing conditions and must reach that conclusion without time for deliberation. Also, the highway patrol officer at one point on the highway might consider the motorist as doing a good job of driving, while another patrolman of a more careful or cautious temperament might think the motorist was imprudent and driving at an unreasonably fast rate of speed.

The statute in question, to wit: Sections 510 and 511 of the Vehicle Code, is a statewide law and governs all traffic on the streets and highways of California, whether urban or rural. The Court must take judicial notice of the fact that the yardstick of prudent or reasonable driving speed under such indefinite and uncertain statute, would vary with the need for revenue by the various

municipalities through which the motorist must pass. It is a notorious fact that throughout California, and probably other states, the local police Courts presided over by judges appointed by City Councils, many of whom are not attorneys at law, are expected to gather in through traffic speed fines a definite annual revenue which is actually set up in the city budgets.

Furthermore, standards of prudence and reasonableness in speed, are in large measure, like morals, a matter of Geography, in this: that large municipalities vary sharply from the small rural communities in their ideals.

It therefore becomes apparent that whether or not a particular motorist is a criminal driver under given conditions depends on geography, the temperament, whim or caprice of arresting officers, juries, local magistrates or avaricious town councils.

The luckless motorist must balance all of these factors in his mind as he drives along the splendid highways of California, and reach the correct conclusion instantly, or find himself in the toils of the law, though he, himself thinks he is driving prudently and reasonably and is not all conscious of guilt.

The probability of oppression under such indefinite and uncertain statutes governing automobile speeds is much greater than under statutes governing more serious offenses, for the reason that a motorist on an extended trip cannot afford to take the time and incur the expense to defend himself in these matters. Or in the case of local war industries the war workers cannot properly sacrifice the time from their essential war work to attend traffic courts without injury to the War effort.

Furthermore it is most important that the Supreme Court of the United States take jurisdiction of this matter because of the conflict in interpretation by various states as to the Constitutionality of similar legislation under

the Fourteenth Amendment to the Constitution of the United States. For example in Georgia, the Court of last resort, in the case of *Hayes* v. *State*, 11 Georgia App. 769, construing an almost identical automobile speeding statute, has ruled exactly opposite to the rule established in California and in Indiana. In that case the Court makes the following inquiry: "What rate of speed is reasonable and proper? Who should determine the question? What is the test as to the rate of speed which can be employed, AND HOW IS THE DRIVER TO KNOW WHEN HE IS DRIVING AT A RATE OF SPEED PROHIBITED BY THE ACT? Manifestly the question cannot be determined by the CONSEQUENCES WHICH ENSUE from driving an automobile. THE LAW MUST SO DEFINITELY AND CERTAINLY DEFINE THE OFFENSE THAT A PERSON OF REASONABLE UNDERSTANDING CAN KNOW AT THE TIME OF THE COMMISSION OF THE ACT, THAT THE LAW IS BEING VIOLATED. One Jury might say that a certain rate of speed was reasonable and proper; another jury might reach exactly the opposite conclusion from exactly the same facts and circumstances". The Georgia Court therefore ruled that the Act was unconstitutional as being too vague and indefinite.

We consider this Georgia case exceptionally well reasoned and logical in interpreting the Fourteenth Amendment.

II.

Is Section 511 of the Vehicle Code of California violative of the Fourteenth Amendment to the Constitution of the United States, and in particular the due process clause thereof, for the reason that the provisions of said code section attempt to create a crime by presumption of law, which presumption is not related to the provisions of Section 510 of the Vehicle Code of California, which contains the basic speed law of California, and which presumption is illogical, unreasonable and oppressive?

Section 511 of the Vehicle Code sets up various so called "prima facie" speed zones such as the 25 mile zone involved in the instant case, and then reads as follows to wit:

> "The speed of any vehicle upon a highway not in excess of the limits specified in this section, or established as authorized in this code, is lawful, unless clearly proved to be in violation of the basic rule declared in Section 510 hereof; The speed of any vehicle upon a highway in excess of any of the limits specified in this section, or established as authorized in this Code, is prima facie unlawful unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof, at the time, place and under the conditions then existing."

The challenge to this section, especially the second paragraph of it, is that it establishes a presumption of law which, either creates a crime, or establishes the fact that a crime has been committed, and is thus used, not as a legitimate procedural rule, but as an invalid attempt to create an element of substantive law by presumption.

In the quoted section 511 V. C., the presumption seeks to establish the fact that a crime has been committed. Speed alone is not an offense under the substantive part of

the law, to wit: Section 510 Vehicle Code—it is speed *plus other factors.* Therefore the presumption seeks to create these other factors, which are essential to prove that a crime has been committed, under the terms of Section 510 V. C.

There is no rational connection between speed and the condition of the highway or other traffic hazards. Here the presumption that the substantive law was violated, i. e. not speed alone, nor a careful and prudent speed merely, but the law gives the yardstick by which the careful and prudent or prudent and reasonable speed may be ascertained (to wit: conditions of the highway, traffic thereon, etc.), and by that method only. How can speed alone establish a reasonable and rational presumption of the surrounding circumstances and conditions which are an essential part of the crime, to wit: width of the highway, surface of the highway and traffic thereon?

In other words, through the mechanism of this illogical and unreasonable presumption, the prosecution is relieved of the necessity of proving the other essential factors required by section 510 V. C., to wit: that the highway and the width and surface thereof, and the traffic thereon was such as to render the proven speed to wit: 25 miles an hour, unreasonable and imprudent and hazardous to persons and property.

It is conceded that there are numerous decisions holding that a presumption may be legitimately enacted by statute and used by the people or the prosecution to establish certain facts where such facts are peculiarly within the knowledge of a defendant and are very difficult for the prosecution to prove. This is generally called the "rule of convenience" and has been used especially in the alien cases

where the fact of birthplace is only known to defendant, etc.

The instant case however has nothing in common with such cases and there is no reason for applying this rule of convenience to a traffic case where the arresting highway patrolman has a BETTER KNOWLEDGE of all the conditions on the highway and the speed and manner of driving of a defendant motorist, than the defendant himself.

This rule of convenience has never been extended to a traffic case or any other case where the prosecution has as good or better knowledge, and opportunity for knowledge, as a defendant, and it should not be extended to such cases.

The danger of extending the practice of convicting persons by presumption is aptly expressed by Mr. Justice Brandeis, in his dissenting opinion in the case of *Casey* v. *United States*, 276 U. S. at p. 420, to wit: "Once the thumb screw and the following confession made the conviction easy, but that method was crude, and I suppose now would be declared unlawful upon some ground. Hereafter PRESUMPTION is to lighten the burden of the prosecutor. The victim will be spared the trouble of confessing and will go to his cell without mutilation or disquieting outcry".

We submit that it is most important that the Supreme Court take jurisdiction of this case for the reason that it has to do with the even flow of interstate commerce and more people are affected by traffic laws than any other type of criminal statutes.

It is very important that the confusion in the minds of interstate motorists caused by the conflicting decisions in the various states be resolved by the judgment of the Supreme Court. This is especially true during war time when interstate trucks and buses and other vehicles are contributing so greatly to the war effort.

E.

Cases Believed to Sustain Jurisdiction.

Hayes v. *State*, 11 Georgia App. 769, (declaring unconstitutional a motor vehicle Act almost identical with the California Law).

U. S. v. *Reese*, 92 U. S. 214;

Yick Wo v. *Hopkins*, 6 Sup. Ct. Rep. 1070;

James v. *Bowman*, 190 U. S. 141;

Brown v. *State*, 137 Wisconsin 543;

A. B. Small v. *American Sugar Refining Co.*, 267 U. S. 233;

Casey v. *U. S.*, 276 U. S. 276;

Morrison v. *California*, 291 U. S. 82;

People v. *Osaki*, 209 Cal. 169 (An alien land law case containing good discussions of the limits of the "rule of convenience").

Manley v. *Georgia*, 279 U. S. 1;

Western and Atlantic R. R. v. *Henderson*, 279 U. S. 639;

Pacific Gas & Electric Co. v. *Sacramento*, 251 U. S. 22 (Appeal from Intermediate Court where judgment has become final).

We therefore respectfully submit that this appeal be allowed and that the Judgment of the Appellate Department should be reversed.

MORRIS LAVINE,
STANLEY MOFFATT,
Attorneys for Defendant and Appellant.

FILED
MAR 16 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 794

ABRAHAM S. RATNER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES.

STATEMENT OPPOSING JURISDICTION.

RAY L. CHESEBRO,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
WIXON STEVENS,
Deputy City Attorney,
JOHN L. BLAND,
Deputy City Attorney,
Counsel for Appellees.

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IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CR A 1988

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

ABRAHAM S. RATNER,

Defendant and Appellant.

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court, as follows:

I.

There is involved no substantial Federal question which has not been settled by previous decisions of this Court.

This appeal is based upon the alleged invalidity of two sections of the Vehicle Code of the State of California, Statutes of 1935, Chapter 27, as amended, each of which we shall discuss separately.

Unless otherwise indicated, all citations to sections refer to sections of the Vehicle Code of the State of California.

A.

Section 510 is not in violation of the Fourteenth Amendment of the Constitution of the United States because of vagueness, indefiniteness or uncertainty.

The provisions of Section 510 are as follows:

> "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

Examination discloses that standards are therein set forth which constitute a yardstick for safe driving. The objections raised and sustained in *U. S.* v. *Cohen Grocery Co.*, 255 U. S. 81, where the statute under consideration forbade the making of an "unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," are not present.

In the section here involved there are set forth three definite standards: the traffic on, the surface, and the width of the highway. The scope of inquiry is therefore limited and brought within the confines of reasonable understanding.

A law is not indefinite merely because a man must estimate his actions to correspond with what a jury may decide, at a later date, to be proper.

Nash v. *United States*, 229 U. S. 373
Miller v. *Strahl*, 239 U. S. 426
United States v. *Ragen*, 314 U. S. 513

In *United States* v. *Ragen*, supra, this Court stated, at page 523:

> "The mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of

reasonableness is not sufficient to make it too vague to afford a practical guide to permissible conduct."

For years, a number of states have had in force statutes which are similar to Section 510 both in form and substance. The courts have considered these statutes, and the weight of authority lies in favor of their validity. The majority of the cases involving these statutes have been collected in 26 A. L. R. 897-903, and are cited below, together with more recent decisions.

Mulkern v. *State*, 176 Wis. 490.
State v. *Schaeffer*, 96 Ohio St. 215.
Schultz v. *State*, 89 Neb. 34.
State v. *Goldstone*, 144 Minn. 405.
People v. *Beak*, 291 Ill. 449.
Smith v. *State*, 186 Ind. 252.
Gallagher v. *State*, 193 Ind. 629.
People v. *Banat*, 39 Cal. App. (2d) (Supp.) 765.

Appellant urges that, because different traffic officers or different juries may not agree upon whether a given speed is or is not dangerous under certain circumstances, the law is uncertain.

If the driver is proceeding at a speed in excess of the prima facie safe speed, the law itself determines an officer's duty. If the speed is less than that prescribed as prima facie lawful, the situation is no different from that which confronts officers charged with enforcing many laws, the violation of which amounts to a misdemeanor. One officer will arrest for intoxication a person whom another officer would not deem to be intoxicated. We know from experience that the idea of what constitutes intoxication is as varied as the seasons.

The appellant urges that, because one jury may convict a defendant under a given set of facts while a different jury

will acquit another defendant under the same set of facts, unequal enforcement of the law results. It is a matter of common knowledge that one jury will convict a defendant of intoxication upon evidence which another jury would consider insufficient to justify such action. The same result obtains in prosecutions for lewd and indecent conduct, vagrancy, indecent shows, and other offenses, including theft and acts classified as criminal per se. The reaction of juries to evidence is not uniform.

Would appellant have this Court declare all our laws against indecency, immorality and safety invalid just because some are convicted while others equally guilty are acquitted? Manifestly, the legislature cannot prepare a chart showing all the possible conditions which, when combined with a named rate of speed, will be unsafe. It has followed what has been found by legislative experience to be the only practical method. It established a rule of reason; one which a reasonable man by the exercise of his powers of observation and deduction can well follow.

Appellant urges that jurisdiction of this matter be taken to insure an even flow of interstate traffic and to relieve in the minds of interstate motorists the confusion caused by conflicting decisions in various states. However desirable such action might be, the rule is well settled that one not affected may not complain. As the record does not disclose that appellant has traveled elsewhere than in California, his reasoning finds no support.

Massachusetts v. *Mellon*, 262 U. S. 447;
Utah Power & Light Co. v. *Pfost*, 286 U. S. 165;
Virginian Railway Co. v. *System Federation*, 300 U. S. 515;
Henneford v. *Silas Mason Co.*, 300 U. S. 577.

B.

Section 511 is not in violation of the Fourteenth Amendment of the Constitution of the United States for the reason that the statutory presumption therein created arises only after proof of certain facts rationally connected with it.

The provisions of Section 511, as amended by Statutes 1941, Chapter 1052, insofar as they apply to the case at bar, are as follows:

> "The speed of any vehicle upon a highway not in excess of the limits specified in this section or established as authorized in this code is lawful unless clearly proved to be in violation of the basic rule declared in Section 510 hereof.
>
> "The speed of any vehicle upon a highway in excess of any of the limits specified in this section or established as authorized in this code is prima facie unlawful unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in Section 510 hereof at the time, place and under the conditions then existing.
>
> "The prima facie limits referred to above are as follows and the same shall be applicable unless changed as authorized in this code and, if so changed, then only when signs have been erected giving notice thereof, in which event the speed designated on the sign shall be the prima facie limit:
>
> • • • • • • •
>
> "(b) Twenty-five miles per hour:
>
> "(1) In any business or residence district."

Residence and business districts are defined in Sections 89 and 90 of the Vehicle Code of California, Statutes of 1935, page 99.

A state may prescribe rules of evidence providing that proof of a particular fact, or of several facts collectively, shall be prima facie evidence of another fact when there is some rational connection between the fact proved and the ultimate fact presumed.

Mobile, J. & K. C. R. Co. v. *Turnipseed*, 219 U. S. 35;
Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8;
McFarland v. *American Supar Refining Co.*, 241 U. S. 79.

To raise the presumption here provided, it is incumbent upon the prosecution to prove not only that the speed of the defendant's vehicle was in excess of the prima facie limit but also the character of the district through which such vehicle was then traveling. This having been done, the facts presumed are those set forth in Section 510, previously discussed. The burden of going forward with the evidence is then cast upon the accused. Such was the construction placed upon the statute in the case of *In re* Johnson, 6 Cal. App. (2d) 654, where the court, in construing subdivisions "a" and "c" of Section 113, California Vehicle Act (now Sections 510 and 511, respectively, of the California Vehicle Code), at page 657, said:

> "We think the language means, and the legislature intended that speeds in excess, for instance, of 45 miles an hour, is prima facie evidence of a violation of the prohibitory provisions of the section, which are found only in subdivision 'a'; that is, a speed in excess of 45 miles an hour, for example, is a greater speed than is prudent, reasonable or proper, having due regard to the traffic, surface and width of the highway, and that such driving upon a public highway, at such speed, is to endanger the life, limb or property of some person.
>
> "The section then gives the alleged offending vehicle driver an opportunity to rebut the prima facie effect of the excessive speed, and show that none of the prohibitory provisions of the section have been violated."

It is under this construction that the statute in question will be read.

Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61;
Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8.

The legislature, in prescribing the maximum prima facie limits, has taken cognizance of the fact that some districts are more thickly populated than others, resulting in greater vehicular traffic, presenting more actual and potential hazards and necessitating slower driving. It has set forth the speed limits at which, under normal conditions, it is safe to drive in congested areas. In the case of a residential district such prima facie limit is 25 miles per hour. Therefore, it is the position of the appellee that there is a rational connection between the facts proved in the instant case, to wit, a speed of 40 miles per hour in a residential district, and the facts presumed: that such driving was neither reasonable nor prudent.

A number of states have statutes similar in substance and form to Section 511. Examination of the cases involving those statutes discloses that the construction placed thereon by the courts of the respective jurisdictions is substantially the same as the construction placed upon Section 511 by the California courts.

People v. *Mellon*, 104 Misc. Rep. 355;
People v. *Brown*, 33 N. Y. S. (2d) 58;
People v. *Carrie*, 204 N. Y. S. 759;
Commonwealth v. *Cassidy*, 209 Mass. 24;
City of Cincinnati v. *Cramer*, 63 Ohio App. 526;
People v. *Beak*, 291 Ill. 449;
Smith v. *State*, 186 Ind. 252;
Gallagher v. *State*, 193 Ind. 629.

We do not contend that Section 511 embodies the principle of convenience in producing proof. We do urge that it

constitutes a legislative declaration of what the legislature found to be the limit of speed at which vehicles could be safely driven under normal conditions in districts of certain density of occupation, and rightfully places upon a defendant the duty of going forward with the evidence to show that, because of the condition of the highway, the absence of other traffic, etc., it was safe for him to exceed such prescribed speed.

We think it fundamental that the State has the power to prescribe maximum speed of vehicles. Having such power it has the power to prescribe the conditions under which a given speed may be exceeded, and casts upon him who wishes to exceed a certain speed the burden of showing that his action was lawful.

The appellee submits that the federal questions involved in this case have been fully answered by applicable decisions of this Court and that no reason appears why this Honorable Court should take jurisdiction of the instant appeal.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney;
DONALD M. REDWINE,
Assistant City Attorney;
WIXON STEVENS,
Deputy City Attorney;
JOHN L. BLAND,
Deputy City Attorney,
Attorneys for Appellee,
The People of the State
of California.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 794

ABRAHAM S. RATNER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT, STATE OF CALIFORNIA.

PETITION FOR REHEARING.

MORRIS LAVINE,
STANLEY MOFFATT,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 794

ABRAHAM S. RATNER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appellee.

PETITION FOR REHEARING.

Comes now the petitioner, Abraham S. Ratner, and respectfully petitions for a rehearing in this cause upon the following grounds, to-wit:

I.

That the substantial question and importance of the question herein involved concerns every state and every city.

II.

That the case at bar is distinguishable from the cases cited by the court in its memorandum opinion.

III.

That the court overlooked and did not decide the important question that the statute (Section 511, California Ve-

hicle Code) inherently and as construed and applied in this case shifts the burden of proof to the defendant, and thus is constitutionally not permissible under the Fourteenth Amendment to the Constitution of the United States.

IV.

That the statute, inherently and as construed and applied in this case, raises a statutory presumption in violation of due process of law.

The statutes involved are sections 510 and 511 of the Vehicle Code of California.

Section 510 provides as follows:

> "Basic Speed Law. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

Section 511 provides as follows:

> "Prima Facie Speed Limits. The speed of any vehicle upon a highway not in excess of the limits specified in this section is lawful unless clearly proved to be in violation of the basic rule declared in section 510 hereof.
>
> "The speed of any vehicle upon a highway in excess of any of the limits specified in this section is prima facie unlawful *unless the defendant establishes by competent evidence that said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof at the time, place and under the conditions then existing.*" (Italics ours.)

The prima facie limits referred to above are as follows:

> "(a) * * *
> "(b) * * *

"(c) Twenty-five miles per hour in any residence district."

(This is the section which was involved in the charge against appellant.)

Today more than ever the rights and duties of citizens throughout the country with respect to driving automobiles are of fundamental importance, because adjudged violations of penal statutes are not only grounds for revocation of drivers' licenses, but for revocation of gas rationing, and therefore, whether the statutes in question are within the scope of constitutional guaranties under the Fourteenth Amendment to the United States Constitution becomes of vital importance.

Title 28, U. S. Code section 344, (Judicial Code) provides as follows:

"(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

Jurisdiction, therefore, to review the statute is granted by this section.

This case is easily distinguishable from the cases cited by the Court in its memorandum opinion.

The only question raised in the case of *United States* v. *Ragen*, 314 U. S. 513, 86 L. Ed. 383, is the construction of an income tax statute,—as to whether the word "reasonable" in connection with a deduction of income tax was a "reasonable standard of conduct," or whether it was too vague to afford a practial guide to permissible conduct. This Court held that under the particular case the statute was not too vague and indefinite.

Section 510 of the Vehicle Code of California, however, does not afford such a standard or guide. It says that "No person shall drive a vehicle upon a highway at a speed greater than *is reasonable or prudent* having due regard for the traffic on, and the surface and width of the highway, and in no event at a speed which endangers the safety of persons or property."

Thus, under the statute each driver is called upon to determine (1) what is reasonable; (2) what is prudent; (3) what is due regard for the traffic on, (4) and the surface; (5) and width of the highway; (6) what is a speed which endangers the safety of persons or (7) property.

The statute therefore lets every driver of every automobile, whether he has good eyesight or bad eyesight, whether he is a man of intelligence and education or is uneducated; every police officer; every traffic patrolman; every judge and every juror, to consider each of these seven different requirements and determine for himself what the statute really prohibits and punishes.

Thus the statute leaves open the widest conceivable inquiry into speed or lack of speed, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against. This is forbidden under the Fourteenth Amendment.

United States v. *L. Cohen Grocery Co.*, 255 U. S. 89, 65 L. Ed. 520, 41 S. Ct. 298.

Int'l. Harvester Co. v. *Kentucky*, 234 U. S. 216, 58 L. Ed. 1284.
Collins v. *Kentucky*, 234 U. S. 634, 58 L. Ed. 1510.

And in *Pierce* v. *United States*, 314 U. S. 305, 311, and *Lanzetta* v. *New Jersey*, 306 U. S. 451, 83 L. Ed. 888, declaring that it is a fundamental concept that crimes must be defined with appropriate definiteness.

The following cases hold speed laws void which are vague and uncertain:

State of W. Va. v. *Lantz*, 90 W. Va. 738, 111 S. E. 766.
Ex parte L. L. Slaughter, 92 Tex. Co. Rep. 212, 243 S. W. 478.
Hayes v. *State*, 11 Ga. App. 371, 75 S. E. 523.
Holland v. *State*, 11 Ga. App. 769, 76 S. E. 104.
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Empire Life Ins. Co. v. *Allen*, 141 Ga. 413, 81 S. E. 120.
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Jones v. *Stokes*, 145 Ga. 744.
Russell v. *State*, 88 Tex. Cr. Rep. 512, 228 S. W. 566.
Snyder v. *State*, 89 Tex. Cr. Rep. 192, 230 S. W. 146.
Ex parte Carrigan, 92 Tex. Cr. Rep. 309, 244 S. W. 604.
Griffin v. *State*, 218 S. W. 494 (Texas).

The result of Section 510 of the Vehicle Code of California is to allow every traffic officer in the State to make his own determination of what is "a reasonable or prudent" speed under a particular given circumstance, varying with weather conditions, with the surface and width of the highway, with the traffic upon the highway, visibility, and the number of persons or property on the highway.

In this field the law is definitely capable of definition as to what is a "reasonable or prudent" speed, and what is a speed "which endangers the safety of persons or prop-

erty," and which does not leave the entire question to the will and whim of any traffic officer who can, by his own opinion, hail a person into court with the possible result of loss of his driver's license, his O. P. A. rationing license, and all of the other serious consequences which flow from such determination.

This being a country of laws and not of men, it is important that the laws be sufficiently definite so as not to subject every automobile driver to the whim, caprice or determination of any single officer. It is not difficult for legislatures to fix traffic laws which are definite and certain, so that no penal consequences flow from such uncertainty and vagueness and which subject the citizens to penal consequences.

Bearing in mind also that these statutes affect thousands of citizens now driving motor vehicles all over the country, we respectfully submit that the question is substantial and should be determined by this highest court, as it affects citizens everywhere.

It must be borne in mind too, that many states have statutes which declare such penal violations negligence per se in civil actions, and hence there should be a definite and certain standard fixed. We may say that in practically all of the states a violation of the penal statutes constitutes a prima facie case of negligence per se.

II.

Section 511 of the Vehicle Code apparently was overlooked by this Court.

This section shifts the burden of proof to the defendant to establish his innocence, and is therefore violative of fundamental concepts of due process of law, because this section requires the defendant to prove his innocence; whereas, under due process of law it is fundamental that

the state prove the defendant guilty. Thus thousands of drivers of automobiles are called on to prove their innocence in these cases.

In *Tot* v. *United States*, 319 U. S. 463, 87 L. Ed. 1519, this Court said in regard to a presumption created by law which would shift the burden of proof to the defendant:

> "It is not too much to say that the presumptions created by the law are violent, and inconsistent with any argument drawn from experience.
>
> "Nor can the fact that the defendant has the better means of information, standing alone, justify the creation of such a presumption. In every criminal case the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecution. It might, therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper. But the argument proves too much. If it were sound, the legislature might validly command that the finding of an indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible."

(See also, *Morrison* v. *California*, 291 U. S. 90; *McFarland* v. *American Sugar Ref. Co.*, 241 U. S. 79, 86, 60 L. Ed. 899; *Manley* v. *Georgia*, 279 U. S. 1, 73 L. Ed. 575.)

In Section 511 of the Vehicle Code of California the legislature made the speed of any vehicle upon the highway in excess of the uncertain provisions of Section 510, or those contained in Section 511, prima facie unlawful "unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof, at the time, place and under the conditions then existing."

This definitely shifts the burden of proof and compels every person arrested by every police officer in a traffic case

to defend himself on whether he has driven a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard for the traffic on, and the surface and width of the highway, and in no event, at a speed which endangers the safety of persons or property on the highway. By this provision thousands of motorists are brought into court to defend themselves under a procedure which, it is respectfully submitted, is unconstitutional, because they are prima facie guilty, when they are arrested.

This violates the doctrines laid down in *Tot* v. *United States*, 319 U. S. 463, 473, 87 L. Ed. 1519; *Mobile, J. & K. C. R. Co.* v. *Turnipseed*, 219 U. S. 35, 55 L. Ed. 78, 31 S. Ct. 136; *Manley* v. *Georgia*, 279 U. S. 1, 73 L. Ed. 575, 49 S. Ct. 215; *Western & A. R. Co.* v. *Henderson*, 279 U. S. 639, 73 L. Ed. 884, 49 S. Ct. 445; *Morrison* v. *California*, 291 U. S. 82, 78 L. Ed. 664, 54 S. Ct. 281; *Hawes* v. *Georgia*, 258 U. S. 1, 66 L. Ed. 431, 42 S. Ct. 204; *Yee Hem* v. *United States*, 268 U. S. 178, 69 L. Ed. 904, 45 S. Ct. 470. And see *Powers* v. *State*, 204 Ind. 472, 184 N. E. 549, 86 A. L. R. 166.)

It is therefore respectfully submitted that the question is substantial and important throughout the country, and that a rehearing should be granted.

Respectfully submitted,

MORRIS LAVINE,
STANLEY MOFFATT,
Of Counsel,
Attorneys for Appellant.

No. 794. RATNER *v.* CALIFORNIA. Appeal from the Appellate Department of the Superior Court of California, County of Los Angeles. April 3, 1944. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. (1) *Nash* v. *United States*, 229 U. S. 373, 376–7; *United States* v. *Ragen*, 314 U. S. 513, 523–4; (2) *Casey* v. *United States*, 276 U. S. 413, 418; *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 18–19. *Mr. Morris Lavine* for appellant. *Messrs. Ray L. Chesebro* and *John L. Bland* for appellee.